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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,606	08/02/2001	Mats Dahlback	19378.0011	6441
7590	01/28/2005		EXAMINER	
Swidler Berlin Shereff Friedman Suite 300 3000 K Street N W Washington, DC 20007			WILKINS III, HARRY D	
			ART UNIT	PAPER NUMBER
			1742	

DATE MAILED: 01/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/857,606	DAHLBACK ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Harry D Wilkins, III	1742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 08 December 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 13-15 and 17-34 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 13-15 and 17-34 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/08/05</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 8 December 2004 has been entered.

### ***Claim Objections***

2. Claim 34 is objected to because of the following informalities: "small" should be inserted between "very" and "amount". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 13-15, 17-28 and 31-34 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification only provides support for the ranges of O and Si being 500-1600 ppm and 50-120 ppm,

respectively. Thus, the ranges presently claimed are not fully supported in the specification as filed.

Regarding claims 31 and 32, there is no disclosure in the specification as filed for Si and O being "only at a level that is the normal impurity level that results from the production of the alloy".

Regarding claims 33 and 34, there is no disclosure in the specification as filed for Cr and Ni being absent "except for possibly a very small amount at the impurity level".

It should be noted that claims 29 and 30 are not included in this rejection since they each claim the fully supported claimed ranges of Si and O.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 13-15, 17-28, 30 and 32-34 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Mardon et al (US 5,023,048) as supported by Van Swam and Garde et al.

Mardon et al anticipate the invention as claimed. Mardon et al teach (see abstract) a Zr-alloy that contains 0.35-0.65 wt% Sn, 0.20-0.65 wt% Fe and 0.35-0.65 wt% Nb. This composition overlaps the presently claimed range at 0.65 wt% Sn, 0.3-0.6 wt% Fe and at 0.65 wt% Nb. The alloy further contains 900-1600 ppm O. See MPEP 2131.03.

Regarding claims 14, 15, 28, 33 and 34, each of the claims merely recites the maximum allowed presence of Cr and Ni and does not expressly require either to be present. Since Cr and Ni are not intentionally added to the alloy of Mardon et al, one of ordinary skill in the art would have expected the alloy to inherently contain only an impurity amount.

Regarding claims 17-21, 24 and 27, Mardon et al teach (see abstract and title) that the alloy is used as a fuel rod sheath in a nuclear reactor.

Regarding claims 22, 23, 25 and 26, Mardon et al teach (see col 2, lines 55-59) that the inner tubular layer (see Figure) is made of a Zr-alloy of conventional type. Conventional inner layers were made from pure Zr or a Zr-0.4Fe alloy (for support see Van Swam at col 7, lines 45-49 and Figure 2B). The Zr or Zr-0.4Fe alloys possess less strength, and thus, less ductility, than the alloy of Mardon et al (for support see Garde et al '308 at col 4, lines 40-44).

Regarding claim 30, Mardon et al teach (see abstract) including 900-1600 ppm O.

Regarding claim 32, since Si is not intentionally added to the alloy of Mardon et al, one of ordinary skill in the art would have expected the alloy to inherently contain only an impurity amount.

#### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mardon et al (US 5,023,048) in view of Garde et al (US 5,211,774).

The teachings of Mardon et al are described above.

However, Mardon et al do not teach including Si at 50-120 ppm.

Garde et al teach (see abstract) a similar zirconium-based alloy for fuel claddings (see col. 1, lines 6-13) that contains 50-200 ppm Si and typically 100 ppm for the purpose of reduced hydrogen absorption.

Therefore, it would have been obvious to one of ordinary skill in the art to have added 100 ppm Si, as taught by Garde et al to the alloy of Mardon et al because the Si addition would improve the resistance of the alloy to hydrogen absorption.

***Examiner's Note***

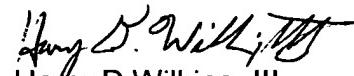
9. Claim 31 is not rejected over the art of record because Mardon et al teach a deliberate addition of O to the alloy. However, as indicated above, the limitation regarding the O in claim 31 is not supported by the specification as filed.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry D Wilkins, III whose telephone number is 571-272-1251. The examiner can normally be reached on M-Th 10am-8:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy V King can be reached on 571-272-1244. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Harry D. Wilkins, III  
Examiner  
Art Unit 1742

hdw